

# Exhibit “A”

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF PENNSYLVANIA

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7 <sup>TH</sup> & ALLEN EQUITIES,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION NO. 5:11-01567-JKG
v.	:	
	:	
HARTFORD CASUALTY INSURANCE	:	
COMPANY,	:	
	:	
Defendant.	:	

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**ORDER**

**AND NOW**, this       day of       , 2012, upon consideration of Plaintiff's Motion in Limine to Preclude Defendant from Proffering Evidence or Argument at the Trial Hereof Regarding the International Fire Code, the International Building Code, or that Plaintiff Failed to Maintain the Interior Temperature of the Third Floor of the Subject Building Above Forty Degrees Fahrenheit, Defendant Hartford Casualty Insurance Company's Opposition thereto, and the record as a whole, it hereby is **ORDERED and DECREED** that the said motion is **DENIED**.

BY THE COURT:

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J.

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF PENNSYLVANIA

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7 <sup>TH</sup> & ALLEN EQUITIES,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION NO. 5:11-01567-JKG
v.	:	
	:	
HARTFORD CASUALTY INSURANCE	:	
COMPANY,	:	
	:	
Defendant.	:	

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**BRIEF OF DEFENDANT HARTFORD CASUALTY INSURANCE COMPANY IN  
OPPOSITION TO PLAINTIFF'S MOTION IN LIMINE TO PRECLUDE DEFENDANT  
FROM PROFFERING EVIDENCE OR ARGUMENT AT THE TRIAL HEREOF  
REGARDING THE INTERNATIONAL FIRE CODE, THE INTERNATIONAL  
BUILDING CODE, OR THAT PLAINTIFF FAILED TO MAINTAIN THE INTERIOR  
TEMPERATURE OF THE THIRD FLOOR OF THE SUBJECT BUILDING ABOVE  
FORTY DEGREES FAHRENHEIT**

Defendant Hartford Casualty Insurance Company ("Hartford"), by its undersigned counsel, hereby presents the following Brief in Opposition to Plaintiff's Motion in Limine to Preclude Defendant from Proffering Evidence or Argument at the Trial Hereof Regarding the International Fire Code, the International Building Code, or that Plaintiff Failed to Maintain the Interior Temperature of the Third Floor of the Subject Building Above Forty Degrees Fahrenheit, as follows:

**I. FACTS**

On November 2, 2012, this Court entered an Order granting in part and denying in part Hartford's motion for summary judgment. (*See* Docket No. 96). This Court affirmatively found that the Policy's coverage exclusion applies because "the Property was unambiguously vacant as defined by the Policy" and "it is undisputed that the First Loss involved sprinkler leakage." (*Id.*

at 16). The only issue related to coverage left to be determined at trial is whether an exception to the Policy exclusion applies, *i.e.*, whether Plaintiff protected the system against freezing. (*Id.* at 17).

On November 6, 2012, Plaintiff filed a Motion for Leave to File a Motion in Limine seeking to preclude Defendant from proffering evidence or argument of the International Fire Code or the International Building Code. (*See* Docket No. 98). Plaintiff also seeks to preclude Defendant from arguing at trial that Plaintiff failed to maintain the temperature of the third floor of the subject building above 40 degrees Fahrenheit. (*Id.*) In support of its motion in limine, Plaintiff relies upon a portion of this Court's opinion, which states:

[T]he Policy does not refer to the International Fire Code and the International Building Code, which require that the interior of buildings with a wet-sprinkler system be heated to a minimum of 40 degrees Fahrenheit. Furthermore, defendant has not established that the third floor temperature was below 40 degrees at the time of the March 4, 2009 incident.

(Docket No. 96 at 21).

## II. LEGAL AUTHORITY

Under the Federal Rules of Evidence 402, evidence is relevant if "it has any tendency to make a fact more or less probable than it would be without the evidence." Fed. R. Evid. 401. All relevant evidence is admissible, unless its "probative value is substantially outweighed by a danger of . . . unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Fed. R. Evid. 402; 403. However, "there is a strong presumption that relevant evidence should be admitted, and thus for exclusion under Rule 403 to be justified, the probative value of evidence must be substantially outweighed by the problems in admitting it. As a result, *evidence that is highly probative is*

*exceptionally difficult to exclude.” Coleman v. Home Depot, Inc.*, 306 F.3d 1333, 1343-44 (3rd Cir. 2002) (internal citations omitted) (emphasis added).

### III. ARGUMENT

The International Fire Code, the International Building Code, and evidence that Plaintiff failed to maintain the third floor of the Building above 40 degrees Fahrenheit are highly relevant and probative of the sole remaining coverage issue in this case: whether the exception to the Policy exclusion applies because Plaintiff protected the sprinkler system against freezing.

At trial, Plaintiff has the burden of proving that the exception to the Policy exclusion applies. *7th & Allen Equities v. Hartford Cas. Ins. Co.*, C.A. No. 11-01567, slip op. at 21 (E.D. Pa. Nov 2, 2012) (Gardner, J.) (citing *Northern Insurance Company of New York v. Aardvark Associates, Inc.*, 942 F.2d 189, 195 (3d Cir. 1991)). As such, the commentary contained in the Summary Judgment Order that “defendant has not established that the third floor temperature was below 40 degrees at the time of the March 4, 2009 incident” is not determinative of whether the exception applies because this is not Defendant’s burden to satisfy.

Additionally, the requirements of the International Fire Code and the International Building Code, including NFPA 25, which have been adopted by the City of Allentown, are highly relevant and probative as to whether Plaintiff protected the sprinkler system against freezing. NFPA 25 tells building owners what they must do to protect wet sprinkler systems from freezing. (HSUF at ¶ 25, Docket No. 38-1). Sprinkler maintenance companies, including Kistler O’Brien whom Plaintiff engaged to maintain the sprinkler system in the Building, follow NFPA 25 when performing inspections of wet sprinkler systems. In fact, an agreement between Plaintiff and Kistler O’Brien, dated October 28, 2004, specifically states that Kistler O’Brien will perform inspections of the Building’s sprinkler system pursuant to NFPA 25 and that “N.F.P.A. 25, the standard for the inspection, testing and maintenance of water based fire protection,

specifies that the owner has the responsibility of maintaining the system(s).” See Kistler O’Brien Renewal Agreement dated 10/28/04, attached hereto as Exhibit 1. Kistler O’Brien then inspected the Building’s sprinkler system on November 4, 2004 and noted at that time that Plaintiff was not in compliance with NFPA 25 because “[t]he unoccupied parts of the building do not have heat, pipes could freeze and brake [*sic*].” Kistler O’Brien Sprinkler System Inspection Report, attached hereto as Exhibit 2, at 2. Kistler O’Brien then made recommendations to Plaintiff, based on NFPA 25, that Plaintiff needed to heat the second and third floors of the subject building in order to prevent freezing of the sprinkler system. (HSUF at ¶¶ 28-29, Docket No. 38-1). Plaintiff refused to follow Kistler O’Brien’s recommendations and, as a result, Kistler O’Brien notified Plaintiff that it would no longer certify the Building’s sprinkler system because the Building was not being properly maintained. (HSUF at ¶ 31, Docket No. 38-1). Instead of correcting the deficiencies raised by Kistler O’Brien, Plaintiff simply chose to stop conducting annual sprinkler inspections. Less than two years after Kistler O’Brien refused to continue inspections unless and until Plaintiff adhered to its recommendations, the sprinkler system suffered the subject freeze event in March 2009.

Therefore, the International Fire Code and the International Building Code, specifically NFPA 25-5.2.5, are highly relevant as to whether Plaintiff met the requirements under the Policy to protect the sprinkler system from freezing. Likewise, evidence that Plaintiff failed to maintain a temperature of greater than 40 degrees, at least, on the third floor of the Building is highly relevant and probative as it supports Hartford’s proofs that Plaintiff failed to protect the sprinkler system from freezing. As this evidence is highly relevant and probative, there is a strong presumption that it should be admitted at trial and this evidence “is exceptionally difficult to

exclude.” *Coleman*, 306 F.3d at 1343-44. Accordingly, Plaintiff’s motion in limine must be denied.

Respectfully submitted,

ANSA ASSUNCAO LLP

s/Michael J. O’Neill

MICHAEL J. O’NEILL, ESQ.  
Michael.O’Neill@ansalaw.com  
Ansa Assuncao LLP  
1600 JFK Boulevard, Suite 900  
Philadelphia, PA 19103  
Telephone: (267) 528-0750  
Facsimile: (267) 528-0726  
*Attorneys for Defendant, Hartford Casualty Insurance Company*

Dated: November 8, 2012

**CERTIFICATE OF SERVICE**

I, Michael J. O'Neill, hereby certify that, on this 8th day of November, 2012 a true and correct copy of Defendant's Brief in Opposition to Plaintiff's Motion in Limine to Preclude Defendant from Proffering Evidence or Argument at the Trial Hereof Regarding the International Fire Code, the International Building Code, or that Plaintiff Failed to Maintain the Interior Temperature of the Third Floor of the Subject Building Above Forty Degrees Fahrenheit has been served on the following counsel of record via the Court's Electronic filing system:

Mark S. Kancher, Esquire  
The Kancher Law Firm, LLC  
Grove Professional Center  
100 Grove Street  
Haddonfield, NJ 08033

Mark S. Haltzman, Esq.  
Silverang & Donohoe, LLC  
595 East Lancaster Avenue, Ste. 203  
St. Davids, PA 19087

*Attorneys for the Plaintiff*

ANSA ASSUNCAO LLP

s/Michael J. O'Neill

MICHAEL J. O'NEILL, ESQ.  
Michael.O'neill@ansalaw.com  
Ansa Assuncao LLP  
1600 JFK Boulevard, Suite 900  
Philadelphia, PA 19103  
Telephone: (267) 528-0750  
Facsimile: (267) 528-0726  
*Attorneys for Defendant, Hartford Casualty  
Insurance Company*



# Exhibit 1

Sep-28-04 02:58pm From:Kistler O'Brien

+610-266-7110

T-285 P 002/004 F-021

**KISTLER O'BRIEN****FIRE PROTECTION****RENEWAL AGREEMENT****Water Based Fire Protection  
Sprinkler - Foam - Fire Pumps  
Inspection Service Agreement**

N.F.P.A. 25, the standard for the inspection, testing and maintenance of water based fire protection, specifies that the owner has the responsibility of maintaining the system(s). By means of periodic inspections, tests, and maintenance, the equipment shall be shown to be in good operating condition, or any defects or impairments shall be revealed. These tasks shall be performed by personnel who have developed competence through training and experience.

**CUSTOMER** C/N A08951  
**PROFESSIONAL PROPERTY MGMT**  
3000 Atrium Way, Ste 219  
Mt. Laurel, NJ 08054

**FACILITY LOCATION**  
**ECKERD DRUG BLDG**  
606 N. 7<sup>th</sup> Street  
Allentown, Pa. 18102

Customer agrees to purchase and Kistler O'Brien, the contractor, agrees to provide complete inspection services and total emergency service support for your water based fire protection system equipment as shown below. All work will be performed in accordance with applicable Codes.

This Service Agreement covers the following protected areas and systems:

**(1) WATER SPRINKLER SYSTEM (1) ANTI-FREEZE LOOP**

The amount to be invoiced and paid by Customer upon completion of each inspection **ANNUALLY** will be **\$ 420.00**. Repair work and emergency service will be provided on a time and material basis at a discounted rate of 10% off list price. **PLUS ST**

**Special Instructions****INSPECTIONS due OCTOBER 2004**

Pricing is based on all work being performed during normal business hours, Monday through Friday (holidays excluded), 7:30 a.m. to 4:00 p.m.

This Agreement shall remain in effect for one year(s) beginning at Date of Execution and shall remain in effect until, and unless, cancelled by either party, in writing, with no less than thirty (30) days notice from date of termination will become effective. This Agreement will automatically renew unless terminated. **RENEWAL AGREEMENT WILL BE FAXED FOR YOUR REVIEW AND CONSIDERATION....**

The 2<sup>nd</sup> page of this document contains important information including a description of functions provided during inspections and a limitation of liability and warranty.

**KISTLER O'BRIEN**  
**FIRE PROTECTION** FED ID# 23-17296-79  
**MARLENE M. STERNER**  
By Marlene M. Sterner  
Title Service Contract Coordinator  
Date September 28, 2004  
DIRECT # (610) 231-0121

7th & Allen Equities  
**CUSTOMER**  
By BRIAN HANNAN  
Title PROPERTY MANAGER  
Date 10/23/04

2210 City Line Road, Bethlehem, PA 18017  
610-266-7100 800-322-9060 610-266 7110 Fax

Exhibit  
243

1271

## KISTLER-O'BRIEN FIRE PROTECTION

2210 City Line Road Bethlehem, Pa. 18017  
DIRECT # (610) 231-0121 Fax (610) 266-7110

### FAX COVER SHEET INSPECTION AGREEMENT

TO: BRIAN HANNAN

DATE: 9/28/04

COMPANY: PPMI

FAX: (856) 727-3559

**"URGENT"**  
**REQUIRED INSPECTIONS**

FROM MARLENE M. STERNER

Pages (With Cover Letter): 4

Inspections are required per the National Fire Protection Association, the  
Local Codes and the Insurance Carriers.....

>>>>>>>We must have written authorization (service agreement) or your Purchase Order  
before we can schedule any service.

>>>>>>>Please return the signed Service Agreement and page 2 or your Purchase Order,  
if PO #'s are a requirement of your company, Via Fax (610) 266-7110 to my attention.

Thank you for your time and consideration in this most important matter.....

We look forward to your reply and of being of service to you once again.

KISTLER-O'BRIEN FIRE PROTECTION is a FULL SERVICE COMPANY

Portable Fire Extinguishers are required to be inspected Annually

We can perform the required inspections on your Portable Fire Extinguishers and all your  
systems FM 200, Halon, CO2, Inergen, Pre-Action, Fire Alarm, Dry Chem, Sprinkler,  
Backflow, Fire Pumps, Anti-Freeze, Standpipes, Restaurant systems, Emergency Lighting  
and more!

We also can provide (3) types of Fire Training for your employees.

Please call me if you have any questions or have any interest in the above at my  
direct # (610) 231-0121 or the 800# 322-9060, Ext. 121.

PAGE 2

**WATER BASED FIRE PROTECTION**  
**FUNCTIONS PROVIDED DURING EACH INSPECTION - ANNUALLY, QUARTERLY**

1. Alarm devices - operation, functional
2. Control valves - condition, operation, security
3. Gauges - condition and operation
4. Buildings - heating, condition, coverage
5. Inspect hangers and bracing including seismic bracing
6. Pipe and fittings - condition visually from external view and only exposed piping
7. Sprinklers to be visually inspected for proper temperature, quantity, location/spacing
8. Verify spare sprinklers and storage cabinet
9. Fire department connections location and operation, also visual
10. Main drain - condition and operation where permissible.

**Inspection Procedures - Various System Types**

**ANTI-FREEZE SYSTEM:**

1. Visually inspect installation. Test solution to verify temperature. (This service would be in addition to the regular inspection cost).

**DRY SYSTEM:**

1. Perform trip test.
2. Verify air compressor operation and oil level.
3. Verify operation of low air alarm.
4. Perform all other normal procedures (1-10 above) that apply to Wet/Dry systems.

**PRE-ACTION & DELUGE SYSTEM:**

1. All normal procedures (1-10 above) that apply to Wet/Dry systems, with the addition of verifying detection and points of activation.

**FOAM SYSTEM:**

1. Check tank condition.
2. Test components of tank and all control valves.
3. Take foam sample and verify condition.
4. If requested, refract test and viscosity testing. (This service would be in addition to the regular inspection cost). Drainage and control to be supplied by others.
5. Verify water supply.
6. Check discharge devices.
7. Test foam pump, if applicable.
8. Verify condition of any spare foam.
9. Testing and maintenance of backflow prevention devices required on foam systems.

**Private Fire Service Maintenance, Testing & Inspection**

**HYDRANTS:**

1. Flow and flush.
2. Operation.
3. Visually inspect condition.

**FIRE PUMPS - ANNUAL FLOW TEST:**

1. Operation of pump and controller.
2. Full flow test.
3. Record and graph results.

**LIMITATION OF WARRANTY AND LIABILITY:**

CONTRACTOR makes no warranty of any kind, express or implied, except that CONTRACTOR will perform the services required by the Contract in a reasonable man standard under the circumstances, and will certify that at the time of the inspection that the (Equipment or System) is operational or will notify OWNER of defects that are discovered that will prevent proper operation of the Equipment or System. OWNER assumes all risk and liability which may result if the defects which are noted on the inspection report are not corrected.

Further, CONTRACTOR does not warrant that the Equipment or System will meet or comply with the requirements of any fire safety code or regulation of any state, municipality or other jurisdiction for the OWNER'S particular location.

This warranty supersedes and is in lieu of any and all other expressed or implied warranties, which are hereby disclaimed. No representative of CONTRACTOR has the ability to make any representations or promise except as stated herein, in the event that CONTRACTOR is found liable to OWNER for breach of contract or any other cause of action, OWNER agrees that CONTRACTOR'S total liability will be limited to the amount of the contract, or the amount of all said payments thereunder, whichever is less. In no event will CONTRACTOR be liable to OWNER for any incidental or consequential damages of any kind.

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## **KISTLER O'BRIEN**

### **FIRE PROTECTION**

#### **CORPORATE CAPABILITIES**

Kistler O'Brien is a full service company providing consultation, system configuration, installation and service of most fire protection systems for business and industry. Few companies can match the expertise of Kistler O'Brien.

**Your single source for fire protection...from portable fire extinguishers...to automatic suppression systems...to alarm and detection systems.**

We provide:

#### **Equipment, System Layout and Technical Services:**

Inergen Suppression Systems	Preaction System Controls
FM-200 Suppression Systems	Dry Chemical Suppression Systems
Halon 1301 Suppression Systems	Kitchen Suppression Systems
Low & High Pressure CO <sub>2</sub> Suppression Systems	Fire Alarm & Detection Systems
Voice Evacuation Systems	

#### **Sales, Service and Maintenance:**

Portable Fire Extinguishers:	Fire Alarm, Inergen, FM-200, CO <sub>2</sub> , Halon, Dry Chem & Fire Alarm:
. Required Annual Inspection	. Semi-annual or annual inspection
. 6 Year Maintenance	Sprinkler Systems:
. Fire Safety Training Classes	. Monthly, quarterly, semi-annual or annual inspection
Pre-Engineered Kitchen Suppression Systems:	Fire Pump Testing
Required semi-annual inspection	Foam Systems
Off-Road Vehicle Systems	Hose Testing & Inspection
Spray Booth Protection	Emergency Lighting & Exit Signs
Room Integrity Testing	

#### **Installation Services**

By Kistler O'Brien factory-trained personnel  
By other contractors with Kistler O'Brien assistance and checkout

#### **Other**

- 24-Hour Central Station Monitoring
- 24-Hour Emergency Call Out Service
- 50 Fully Stocked Service Vehicles
- U.L. Approved Halon Filling Station
- U.L. Approved Hydrostatic Testing Facility
- Factory-Trained, Uniformed Personnel

Kistler O'Brien represents the best names in the business: Siemens Building Technologies, Inc., Fenwal Protection Systems, Kidde Fire Systems, Fire Control Instruments, Ansul Fire Protection, Amerex Fire Extinguishers.

Rev 09/03  
Sup 07/01

2210 City Line Road, Bethlehem, PA 18017  
610-266-7100 800 322-9060 610-266-7110 Fax

# Exhibit 2

**KISTLER O'BRIEN**  
**FIRE PROTECTION**

 2210 CITY LINE ROAD  
 BETHLEH, PA 18017  
 PHONE (610) 266-7100 OR (800) 322-9060  
 FAX (610) 266-7110

**SPRINKLER SYSTEM INSPECTION REPORT**

Page 1 of 2

COMPANY NAME & NO.		BUILDING OR LOCATION	
Professional Fire Protection, Inc.		Building of Federal Gov.	
ADDRESS		INSPECTOR(S)	
3600 Alton Way, Suite 219		K. Fry	
CITY/STATE/ZIP		DATE	
MT. Laurel, MD		11/04/04	
CUSTOMER CONTACT		PHONE ( )	
TITLE			

**1. GENERAL**

1. 1st floor only
- Is the building occupied? .....
  - Is occupancy same as previous inspection? .....
  - Are all systems in service? .....
  - Are all fire protection systems same as last inspection? .....
  - Is hazard completely sprinklered? .....
  - Are all new additions and building changes properly protected? .....
  - Is all stock or storage properly below sprinkler piping? .....
  - Was property free of fires since last inspection? (Explain any fire on Page 2) .....
  - In areas protected by wet system, does the building appear to be properly heated in all areas, including blind attics, perimeter areas and are all exterior openings protected against entrance of cold air? .....

**2. CONTROL VALVES** (See Section 16)

- Are all sprinkler system main control valves open? .....
- Are all other valves in proper position? .....
- Are all control valves in good condition and sealed or supervised? .....

**3. WATER SUPPLIES** (See Section 17)

- Was a water flow test made and results satisfactory? .....

**4. TANKS, PUMPS, FIRE DEPT. CONNECTIONS**

- Are fire pumps, gravity tanks, reservoirs and pressure tanks in good condition and properly maintained? .....
- Are fire dept. connections in satisfactory conditions, couplings free, caps in place and check valves tight? .....

**5. WET SYSTEMS** (See Section 13)

- Have anti-freeze systems been tested and left in satisfactory condition? .....
- Type of Anti-Freeze \_\_\_\_\_ Temp of Solution tested \_\_\_\_\_ °F ☐ Pass ☐ Fail .....
- Are alarm valves, water flow indicators and retards in satisfactory condition? .....
- Internal inspection of alarm valve. Last date performed \_\_\_\_\_ Condition Unk .....

**6. DRY SYSTEMS** (See Section 14)

- Is dry valve in service and in good condition? .....
- Is air pressure and priming water level normal? .....
- Is air compressor in good condition? .....
- Were low points drained during fall and winter inspections? .....
- Are Quick Opening Devices in service? .....
- Has piping been checked for stoppage within past 10 years? .....
- Has piping been checked for proper pitch within past 5 years? .....
- Have dry valves been trip tested satisfactorily as required? .....
- Are dry valves adequately protected from freezing? .....
- Valve house and heater condition satisfactory? .....

**7. SPECIAL SYSTEMS, DELUGE, PRE-ACTION** (See Section 18)

- Were valves trip tested? ☐ Partial ☐ Full .....
- Was solenoid tested? .....
- Was solenoid reinstalled upon completion? .....
- Verification of detection. Type of detection .....
- Verification of low air/supervisory functions. ....

**8. ALARMS**

- Water motor and gong test satisfactory? .....
- Electric alarm test satisfactory? .....
- Supervisory alarm service test satisfactory? .....

**Exhibit**  
**505**
**Δ π EXHIBIT 1**
Deponent FryDate 11/17/12 Rpt. DFE

WWW.DEPOBOOK.COM

\*Explain "NO" answers on Page 2, Line 18

KISTLER 0033



BUILDING OR LOCATION

[illegible]

- Make and Model? \_\_\_\_\_ Open \_\_\_\_\_ Secured \_\_\_\_\_ Closed \_\_\_\_\_ Signs \_\_\_\_\_

## System Control Valves

		Open		Secured		Closed		Signs		Condition
Number	Type	Yes	No	Yes	No	Yes	No	Yes	No	
1	OSKY	/		/			/	/		OK

## WATER FLOW TEST

17. Water Pressure? 110.0 CITY 75 PSI TANK \_\_\_\_\_ PSI FIRE PUMP \_\_\_\_\_ PSI  
Water Flow Test? \_\_\_\_\_ (if none performed, why?) \_\_\_\_\_

Water Flow Test?		(in hole parameters)			Size		Pressure		Flow		Pressure	
Test Pipe Located	Test Pipe	Pressure Before	Flow Pressure	Pressure After	Test Pipe Located	Test Pipe	Pressure Before	Pressure After	Flow Pressure	Pressure After	Flow Pressure	Pressure After
MHW Drain	2	75	65	75								

18. Explanation of any "No" answers:

18. Explanation of any "No" answers: Prior to Insp. Alarm panel had 2 troubles couldn't clear troubles one panel. (3i) The unoccupied parts of the building do not have heat pipes could freeze and Break. (5a) Anti freeze loop is in poor condition. Culpit Insp. (8bc) Temp. or Flow switch didn't report to panel. (9a) Several heads in vacant grid are missing. (9b) Most heads in vacant area are over 50 yrs old and should be U.L. Tested. (5c) Gas Barbs Union and Alarm valve are corroded heavily and have started leaking.

19. Recent changes in building occupancy or fire protection equipment:

20. Adjustments or corrections made:

21. Recommended Improvements:

KISTLER 0034

\*Explain "NO" answers on Page 2, Line 18

Technician's Signature/Date

Customer's Signature/Date

**FILE**



# Exhibit “B”

Sep-28-04 02:58pm From:Kistler O'Brien

+610-266-7110

T-285 P 002/004 F-021

**KISTLER O'BRIEN****FIRE PROTECTION****RENEWAL AGREEMENT****Water Based Fire Protection  
Sprinkler - Foam - Fire Pumps  
Inspection Service Agreement**

N.F.P.A. 25, the standard for the inspection, testing and maintenance of water based fire protection, specifies that the owner has the responsibility of maintaining the system(s). By means of periodic inspections, tests, and maintenance, the equipment shall be shown to be in good operating condition, or any defects or impairments shall be revealed. These tasks shall be performed by personnel who have developed competence through training and experience.

**CUSTOMER** C/N A08951  
**PROFESSIONAL PROPERTY MGMNT**  
3000 Atrium Way, Ste 219  
Mt. Laurel, NJ 08054

**FACILITY LOCATION**  
**ECKERD DRUG BLDG**  
606 N. 7<sup>th</sup> Street  
Allentown, Pa. 18102

Customer agrees to purchase and Kistler O'Brien, the contractor, agrees to provide complete inspection services and total emergency service support for your water based fire protection system equipment as shown below. All work will be performed in accordance with applicable Codes.

This Service Agreement covers the following protected areas and systems:

**(1) WATER SPRINKLER SYSTEM (1) ANTI-FREEZE LOOP**

The amount to be invoiced and paid by Customer upon completion of each inspection **ANNUALLY** will be **\$ 420.00**. Repair work and emergency service will be provided on a time and material basis at a discounted rate of 10% off list price. **PLUS ST**

**Special Instructions****INSPECTIONS due OCTOBER 2004**

Pricing is based on all work being performed during normal business hours, Monday through Friday (holidays excluded), 7:30 a.m. to 4:00 p.m.

This Agreement shall remain in effect for one year(s) beginning at Date of Execution and shall remain in effect until, and unless, cancelled by either party, in writing, with no less than thirty (30) days notice from date of termination will become effective. This Agreement will automatically renew unless terminated. **RENEWAL AGREEMENT WILL BE FAXED FOR YOUR REVIEW AND CONSIDERATION....**

The 2<sup>nd</sup> page of this document contains important information including a description of functions provided during inspections and a limitation of liability and warranty.

**KISTLER O'BRIEN**  
**FIRE PROTECTION** FED ID# 23-17296-79  
**MARLENE M. STERNER**  
By Marlene M. Sterner  
Title Service Contract Coordinator  
Date September 28, 2004  
DIRECT # (610) 231-0121

7th & Allen Equities  
**CUSTOMER**  
By BRIAN HANNAN  
Title PROPERTY MANAGER  
Date 10/23/04

2210 City Line Road, Bethlehem, PA 18017  
610-266-7100 800-322-9060 610-266 7110 Fax

Exhibit  
**243**

1271

Sep-28-04 02:58pm From:Kistler O'Brien

+610-266-7110

T-285 P 001/004 F-021

## KISTLER-O'BRIEN FIRE PROTECTION

2210 City Line Road Bethlehem, Pa. 18017  
DIRECT # (610) 231-0121 Fax (610) 266-7110

### FAX COVER SHEET INSPECTION AGREEMENT

TO: BRIAN HANNAN

DATE: 9/28/04

COMPANY: PPMI

FAX: (856) 727-3559

**"URGENT"**  
**REQUIRED INSPECTIONS**

FROM MARLENE M. STERNER

Pages (With Cover Letter): 4

Inspections are required per the National Fire Protection Association, the  
Local Codes and the Insurance Carriers.....

>>>>>>We must have written authorization (service agreement) or your Purchase Order  
before we can schedule any service.

>>>>>>Please return the signed Service Agreement and page 2 or your Purchase Order,  
if PO #'s are a requirement of your company, Via Fax (610) 266-7110 to my attention.

Thank you for your time and consideration in this most important matter.....

We look forward to your reply and of being of service to you once again.

KISTLER-O'BRIEN FIRE PROTECTION is a FULL SERVICE COMPANY

Portable Fire Extinguishers are required to be inspected Annually

We can perform the required inspections on your Portable Fire Extinguishers and all your  
systems FM 200, Halon, CO2, Inergen, Pre-Action, Fire Alarm, Dry Chem, Sprinkler,  
Backflow, Fire Pumps, Anti-Freeze, Standpipes, Restaurant systems, Emergency Lighting  
and more!

We also can provide (3) types of Fire Training for your employees.

Please call me if you have any questions or have any interest in the above at my  
direct # (610) 231-0121 or the 800# 322-9060, Ext. 121.

PAGE 2

WATER BASED FIRE PROTECTION  
FUNCTIONS PROVIDED DURING EACH INSPECTION - ANNUALLY, QUARTERLY

1. Alarm devices - operation, functional
2. Control valves - condition, operation, security
3. Gauges - condition and operation
4. Buildings - heating, condition, coverage
5. Inspect hangers and bracing including seismic bracing
6. Pipe and fittings - condition visually from external view and only exposed piping
7. Sprinklers to be visually inspected for proper temperature, quantity, location/spacing
8. Verify spare sprinklers and storage cabinet
9. Fire department connections location and operation, also visual
10. Main drain - condition and operation where permissible.

Inspection Procedures - Various System Types

ANTI-FREEZE SYSTEM:

1. Visually inspect installation. Test solution to verify temperature. (This service would be in addition to the regular inspection cost).

DRY SYSTEM:

1. Perform trip test.
2. Verify air compressor operation and oil level.
3. Verify operation of low air alarm.
4. Perform all other normal procedures (1-10 above) that apply to Wet/Dry systems.

PRE-ACTION & DELUGE SYSTEM:

1. All normal procedures (1-10 above) that apply to Wet/Dry systems, with the addition of verifying detection and points of activation.

FOAM SYSTEM:

1. Check tank condition.
2. Test components of tank and all control valves.
3. Take foam sample and verify condition.
4. If requested, refract test and viscosity testing. (This service would be in addition to the regular inspection cost). Drainage and control to be supplied by others.
5. Verify water supply.
6. Check discharge devices.
7. Test foam pump, if applicable.
8. Verify condition of any spare foam.
9. Testing and maintenance of backflow prevention devices required on foam systems.

Private Fire Service Maintenance, Testing & Inspection

HYDRANTS:

1. Flow and flush.
2. Operation.
3. Visually inspect condition.

FIRE PUMPS - ANNUAL FLOW TEST:

1. Operation of pump and controller.
2. Full flow test.
3. Record and graph results.

LIMITATION OF WARRANTY AND LIABILITY:

CONTRACTOR makes no warranty of any kind, express or implied, except that CONTRACTOR will perform the services required by the Contract in a reasonable man standard under the circumstances, and will certify that at the time of the inspection that the (Equipment or System) is operational or will notify OWNER of defects that are discovered that will prevent proper operation of the Equipment or System. OWNER assumes all risk and liability which may result if the defects which are noted on the inspection report are not corrected.

Further, CONTRACTOR does not warrant that the Equipment or System will meet or comply with the requirements of any fire safety code or regulation of any state, municipality or other jurisdiction for the OWNER'S particular location.

This warranty supersedes and is in lieu of any and all other expressed or implied warranties, which are hereby disclaimed. No representative of CONTRACTOR has the ability to make any representations or promise except as stated herein, in the event that CONTRACTOR is found liable to OWNER for breach of contract or any other cause of action, OWNER agrees that CONTRACTOR'S total liability will be limited to the amount of the contract, or the amount of all said payments thereunder, whichever is less. In no event will CONTRACTOR be liable to OWNER for any incidental or consequential damages of any kind.

1273

Sep-28-04 03:00pm From:Kistler O'Brien

+610-266-7110

T-285 P.004/004 F-021

# KISTLER O'BRIEN

## FIRE PROTECTION

### CORPORATE CAPABILITIES

Kistler O'Brien is a full service company providing consultation, system configuration, installation and service of most fire protection systems for business and industry. Few companies can match the expertise of Kistler O'Brien.

**Your single source for fire protection...from portable fire extinguishers...to automatic suppression systems...to alarm and detection systems.**

We provide:

#### Equipment, System Layout and Technical Services:

Inergen Suppression Systems	Preaction System Controls
FM-200 Suppression Systems	Dry Chemical Suppression Systems
Halon 1301 Suppression Systems	Kitchen Suppression Systems
Low & High Pressure CO <sub>2</sub> Suppression Systems	Fire Alarm & Detection Systems
Voice Evacuation Systems	

#### Sales, Service and Maintenance:

Portable Fire Extinguishers:	Fire Alarm, Inergen, FM-200, CO <sub>2</sub> , Halon, Dry Chem & Fire Alarm:
. Required Annual Inspection	. Semi-annual or annual inspection
. 6 Year Maintenance	
. Fire Safety Training Classes	Sprinkler Systems:
Pre-Engineered Kitchen Suppression Systems:	. Monthly, quarterly, semi-annual or annual inspection
Required semi-annual inspection	Fire Pump Testing
Off-Road Vehicle Systems	Foam Systems
Spray Booth Protection	Hose Testing & Inspection
Room Integrity Testing	Emergency Lighting & Exit Signs

#### Installation Services

By Kistler O'Brien factory-trained personnel  
By other contractors with Kistler O'Brien assistance and checkout

#### . Other .

24-Hour Central Station Monitoring  
24-Hour Emergency Call Out Service  
50 Fully Stocked Service Vehicles  
U.L. Approved Halon Filling Station  
U.L. Approved Hydrostatic Testing Facility  
Factory-Trained, Uniformed Personnel

Kistler O'Brien represents the best names in the business: Siemens Building Technologies, Inc., Fenwal Protection Systems, Kidde Fire Systems, Fire Control Instruments, Ansul Fire Protection, Amerex Fire Extinguishers.

Rev 09/03  
Sup 07/01

2210 City Line Road, Bethlehem, PA 18017  
610-266-7100 800 322-9060 610-266-7110 Fax

# Exhibit “C”

**KISTLER O'BRIEN**  
**FIRE PROTECTION**

 2210 CITY LINE ROAD  
 BETHLEH, PA 18017  
 PHONE (610) 266-7100 OR (800) 322-9060  
 FAX (610) 266-7110

**SPRINKLER SYSTEM INSPECTION REPORT**

Page 1 of 2

COMPANY NAME & NO. <i>Professional Inspection</i>		BUILDING OR LOCATION <i>Bullington &amp; Feltner</i>	
ADDRESS <i>2000 Atlantic City Sub 219</i>		INSPECTOR(S) <i>K.F.Y.</i>	
CITY/STATE/ZIP <i>MT. LAUREL NJ</i>	TITLE	PHONE ( )	DATE <i>11/04/04</i>
CUSTOMER CONTACT			

**1. GENERAL**

- 1st Floor only*
- Is the building occupied? .....
  - Is occupancy same as previous inspection? .....
  - Are all systems in service? .....
  - Are all fire protection systems same as last inspection? .....
  - Is hazard completely sprinklered? .....
  - Are all new additions and building changes properly protected? .....
  - Is all stock or storage properly below sprinkler piping? .....
  - Was property free of fires since last inspection? (Explain any fire on Page 2) .....
  - In areas protected by wet system, does the building appear to be properly heated in all areas, including blind attics, perimeter areas and are all exterior openings protected against entrance of cold air? .....

**2. CONTROL VALVES** (See Section 16)

- Are all sprinkler system main control valves open? .....
- Are all other valves in proper position? .....
- Are all control valves in good condition and sealed or supervised? .....

**3. WATER SUPPLIES** (See Section 17)

- Was a water flow test made and results satisfactory? .....

**4. TANKS, PUMPS, FIRE DEPT. CONNECTIONS**

- Are fire pumps, gravity tanks, reservoirs and pressure tanks in good condition and properly maintained? .....
- Are fire dept. connections in satisfactory conditions, couplings free, caps in place and check valves tight? .....

**5. WET SYSTEMS** (See Section 13)

- Have anti-freeze systems been tested and left in satisfactory condition? .....
- Type of Anti-Freeze \_\_\_\_\_ Temp of Solution tested \_\_\_\_\_ °F ☐ Pass ☐ Fail .....
- Are alarm valves, water flow indicators and retards in satisfactory condition? .....
- Internal inspection of alarm valve. Last date performed \_\_\_\_\_ Condition *Unk* .....

**6. DRY SYSTEMS** (See Section 14)

- Is dry valve in service and in good condition? .....
- Is air pressure and priming water level normal? .....
- Is air compressor in good condition? .....
- Were low points drained during fall and winter inspections? .....
- Are Quick Opening Devices in service? .....
- Has piping been checked for stoppage within past 10 years? .....
- Has piping been checked for proper pitch within past 5 years? .....
- Have dry valves been trip tested satisfactorily as required? .....
- Are dry valves adequately protected from freezing? .....
- Valve house and heater condition satisfactory? .....

**7. SPECIAL SYSTEMS, DELUGE, PRE-ACTION** (See Section 18)

- Were valves trip tested? ☐ Partial ☐ Full .....
- Was solenoid tested? .....
- Was solenoid reinstalled upon completion? .....
- Verification of detection. Type of detection .....
- Verification of low air/supervisory functions. ....

**8. ALARMS**

- Water motor and gong test satisfactory? .....
- Electric alarm test satisfactory? .....
- Supervisory alarm service test satisfactory? .....

**Exhibit  
505**
**Δ π EXHIBIT 1**

 Deponent *Fry*

 Date *11/12/04* Rptr. *DFE*

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\*Explain "NO" answers on Page 2, Line 18

KISTLER 0033



CUSTOMER NAME PPMOBUILDING OR LOCATION Eckerd 600 N 7th

## 3. SPRINKLERS - PIPING

- a. Are all sprinklers in good condition, not obstructed, and free of corrosion or loading? .....
- b. Are all sprinklers less than 50 years old? .....
- c. Are extra sprinklers readily available? .....
- d. Is condition of piping, drain valves, check valves, hangers, pressure gauges, open sprinklers, strainers satisfactory? .....
- e. Are all sprinklers of proper temperature rating? .....
- f. Are portable fire extinguishers in good condition? .....
- g. Is hand hose on sprinkler systems satisfactory? .....
10. Date Dry System Piping last checked for stoppage .....
11. Date Dry System Piping last checked for proper pitch .....
12. Date Dry Pipe Valve last trip tested .....
13. Wet Systems: Number 1 Make and Model? Viking
14. Dry Systems: Number ..... Make and Model? .....
15. Special Systems: Number ..... Type ..... Condition? .....
- Make and Model? .....

YES	NO	N/A
	/	
/		
	/	
/		
	/	
		/
/		/
		/
/		/

## 16. CONTROL VALVES

- City Connection Control Valve
- Tank Control Valves
- Pump Control Valves
- Sectional Control Valves
- System Control Valves

Number	Type	Yes	No	Yes	No	Yes	No	Yes	No	Signs	Condition
1	OSN	/		/		/		/			OK

## WATER FLOW TEST

17. Water Pressure? 110 lb CITY 75 PSI TANK ..... PSI FIRE PUMP ..... PSI
- Water Flow Test? ..... (if none performed, why?) .....

Test Pipe Located	Size Test Pipe	Pressure Before	Flow Pressure	Pressure After	Test Pipe Located	Size Test Pipe	Pressure Before	Flow Pressure	Pressure After
Main Drain	2	75	65	75					

## 18. Explanation of any "No" answers:

Prior to inspection panel had 2 troubles couldn't clear front of panel. (1) The unoccupied parts of the building should have heat pipes could freeze and break. (5) Anti-freeze loop is in poor condition could trip. (8) Traps or flow switch didn't report to panel. (9) Several hoses in vacant area are frozen. (10) Most hoses in vacant area are over 50 years old and should be replaced. (11) Back valves on alarm valve are corroded heavily and have started leaking.

## 19. Recent changes in building occupancy or fire protection equipment:

Threat store not open couldn't access to check sprinkler system.

## 20. Adjustments or corrections made:

## 21. Recommended Improvements:

KISTLER 0034

\*Explain "NO" answers on Page 2, Line 18

Technician's Signature/Date

Customer's Signature/Date